

DISCLAIMER

This electronic version of an SCC order is for informational purposes only and is not an official document of the Commission. An official copy may be obtained from the [Clerk of the Commission, Document Control Center](#).

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, JUNE 18, 2002

APPLICATION OF

APPALACHIAN POWER COMPANY
d/b/a AMERICAN ELECTRIC POWER-
VIRGINIA

CASE NO. PUE-2001-00011

For approval of a Functional Separation
Plan under the Virginia Electric Utility
Restructuring Act

ORDER ON MOTION

On December 18, 2001, we entered an Order on Functional Separation in this proceeding, which adopted certain stipulations (“Stipulation”) entered into by the participants relevant to the functional separation of Appalachian Power Company d/b/a American Electric Power-Virginia (“AEP-VA” or “Company”). On March 1, 2002, we issued an Order Providing Clarification. On April 30, 2002, AEP-VA filed a Motion to Bifurcate Issues and Defer Further Proceedings (“Motion”).

In its Motion, AEP-VA requests that the Commission: “(a) limit further proceedings in this case to the inquiry into the terms and conditions of [the Company’s] corporate separation and hold all further proceedings on the corporate separation issues in abeyance until no earlier than July 1, 2003; (b) close this case with respect to fuel factor and wires charges issues and consider fuel factors and wires charges for post-2002 periods on such schedules and in such other proceedings as may be appropriate in the future; and (c) close this case with respect to all other issues.” Motion at 4. The Company asserts that

Effective April 9, 2002, the new Case Management System requires that the case number format for all Commission orders change from, e.g., PUE010663 to the following: PUE-2001-00663.

the resolution of certain pending proceedings at the Federal Energy Regulatory Commission (“FERC”) will provide the appropriate context for the Commission to address the proposed corporate separation of AEP-VA. The Company also states that, “[b]y counsel, the Commission Staff and the Division of Consumer Counsel have authorized the Company to state that they do not oppose this motion.” Id.

On May 14, 2002, the Old Dominion Committee for Fair Utility Rates (“Committee”) filed a response in opposition to the Motion. The Committee asserts, among other things, that: (1) granting the Company’s Motion violates the Stipulation entered into by the participants and adopted by the Commission; (2) AEP-VA provides no basis to violate or to overturn the Stipulation; (3) AEP-VA should not continue to ignore the statutory deadline for filing a complete corporate separation plan; and (4) the Commission should deny the Company’s request to close this case with respect to fuel factor, wires charges, and other issues. The Committee claims that AEP-VA has not used its best efforts to conclude this case pursuant to the Stipulation, that granting the Company’s Motion will not encourage parties in future cases to enter into similar stipulations, and that the Company’s request to hold further proceedings in abeyance until no earlier than July 1, 2003, is unrelated to implementation of any order in the pending FERC cases. The Committee also proposed a procedural schedule for the resolution, by January 1, 2003, of issues related to AEP-VA’s corporate separation proposal.

On May 28, 2002, AEP-VA filed a reply to the Committee’s response (“AEP-VA Reply”). AEP-VA characterizes its Motion as a scheduling request, which it filed after consulting with the other parties to the Stipulation on the need for additional time to permit the orderly development of a record. The Company states that, under the Stipulation, although the “mutual goal and objective of the parties was to complete the record in time for the Commission to decide the case by January 1, 2003, there is nothing in the Stipulation that requires the Commission to sacrifice the orderly development of a record

for the sake of an absolute time line.” AEP-VA Reply at 3. AEP-VA suggests that the language of the Stipulation “implies quite the opposite – that an orderly record is paramount because it requires best efforts while the time line is secondary because it is a ‘goal and objective’ rather than a firm commitment to be reached at all costs.” AEP-VA Reply at 3-4. The Company states that an extension would not prejudice anyone, and that the Committee has offered no reason why it would be prejudiced. AEP-VA asserts that it has complied with the statutory deadline to file a functional separation plan and that the Commission, in its Order on Functional Separation referenced above, has met the statutory deadline to direct the Company’s functional separation. The Company also continues to request that the Commission close this proceeding with respect to fuel factor, wires charges, and other issues.

On May 29, 2002, Commission Staff filed a reply to the Committee’s response (“Staff Reply”). Staff requests that the Commission grant the Company’s Motion. Staff believes that “a continued postponement of further Commission proceedings addressing [corporate separation] until the FERC proceedings are decided is appropriate and would, together with an examination of the course of market development in Texas and Ohio, provide useful information for the Commission to consider any plan for corporate separation of the AEP-VA assets.” Staff Reply at 5. Staff states that holding further proceedings in abeyance does not violate the Stipulation, and that there is no evidence any signatory to the Stipulation has failed to use best efforts to develop a record as required therein. Staff also explains that the statutory deadlines for the Company to file a functional separation plan, and for the Commission to direct functional separation, have been met. Finally, “it would seem to Staff that granting the Company’s request to bifurcate the fuel factor and wires charge issues into separate proceedings for the year 2003 would not foreclose further consideration of these issues as part of the Commission’s future consideration of any proposal for corporate separation.” Staff Reply at 6.

NOW THE COMMISSION, having fully considered the pleadings, finds as follows. We will hold further proceedings in this case in abeyance until no earlier than July 1, 2003. We will not, however, close this case with respect to any issue.

The Company and the Staff have shown good cause to hold this proceeding in abeyance. The Stipulation states that the “signatories will use their best efforts to permit the orderly development of a record for the above inquiry, with the mutual goal and objective that the Commission should be able to conclude its investigation and issue an order to resolve these issues on or before January 1, 2003.” AEP-VA Reply at 1 (quoting Stipulation, Staff Exh. 8, at 1-2). Continuing this case to permit the orderly development of a record is consistent with the Stipulation. Indeed, it has not been established that any signatory has failed to use “best efforts” as required by the Stipulation. We also note that we can amend our decision to hold this proceeding in abeyance upon good cause shown if further circumstances warrant.

We agree with the Committee that the Commission does not need to close this case with respect to any issue. For example, the Commission may address fuel factor and wires charge issues in other proceedings, as appropriate, without closing this case with respect to those issues.

Finally, we will direct the Company to file via motion, on July 1, 2003, a proposed schedule for further proceedings in this case. The Company shall confer with the participants prior to such filing, and we encourage the participants to file a joint proposal for further proceedings herein.

Accordingly, IT IS ORDERED THAT:

- (1) Further proceedings in this case are held in abeyance until July 1, 2003.
- (2) Fuel factor, wires charge, and other issues may be addressed in this case, and in other proceedings, as appropriate.

(3) The Company shall file via motion, on July 1, 2003, a proposed schedule for further proceedings in this case.

(4) This matter is continued.